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Paper No. 10

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COPY MAILED

APR 03 2006

OFFICE OF PETITIONS

In re Application of :
Lester Sussman :
Application No. 09/781,698 :
Filed: February 13, 2001 :
Title: SYSTEM AND METHOD FOR A :
COMPLETE AND CONVENIENT :
SHOPPING EXPERIENCE :

DECISION ON PETITION

This is in response to the communication, filed January 19, 2006, which is being treated as a petition to withdraw the holding of abandonment.

On February 5, 2004, the Office mailed a Notice of Non-Compliant Amendment, which set a one-month extendable period to reply. The application became abandoned on March 6, 2004, for failure to submit a timely response to the Notice. On April 20, 2004, the Office mailed a Notice of Abandonment.

In the present petition, petitioner requests that the Office withdraw the holding of abandonment due to nonreceipt of the Notice of Non-Compliant Amendment and the Notice of Abandonment.

PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

A review of the record indicates no irregularity in the mailing of the Notices, and in the absence of any irregularity in the mailing, there is a strong presumption that the Notices was properly mailed to the address of record.

As petitioner is a pro-se applicant, the Office understands that petitioner may not keep a formal docket record system for his correspondence. Nevertheless, petitioner must provide some sort of showing explaining the manner in which petitioner receives mail from the USPTO, maintains files for patent matters, and treats mail received for such matters. Specifically, petitioner must explain the system for keeping track of patent matters - where petitioner keeps the correspondence; where he writes down due dates; how he knows replies are due, etc. In essence, petitioner must explain how he reminds himself

of response due dates and show that the due date for the Notice of Non-Compliant Amendment of February 5, 2004, was not entered into that system. Petitioner should include any available documentary evidence of the mail received, covering a reasonable period after February 5, 2004, to demonstrate nonreceipt of the Notice of Non-Compliant Amendment. Petitioner should also provide the USPTO with copies of any records or other methods, which could serve as a reminder of the due date for a response to an Office action, and where petitioner would have entered the receipt date of the Office action had petitioner received it (for example, a copy of the outside of a file or a calendar maintained by petitioner), if these documents are available. Furthermore, petitioner must include a statement from petitioner, or any other person at the address who may have handled the Notice of Non-Compliant Amendment, indicating that a search was conducted of the location where the correspondence from the USPTO is kept; however, the Notice of Non-Compliant Amendment was not found. Lastly, petitioner must state that he was, in fact, residing at the correspondence address of record for a reasonable time after February 5, 2004; the period when he would have received the Notice of Non-Compliant Amendment.

In the present petition, petitioner did not submit any documentary evidence or an explanation regarding his method for tracking due dates for filing responses to communications from the USPTO to show he did not receive the Notice of Non-Compliant Amendment. Therefore, the petition to withdraw the holding of abandonment is **dismissed**. Copies of the Notice of Non-Compliant Amendment and the Notice of Abandonment accompany this decision for petitioner's convenience.

Any request for reconsideration of the dismissal of the petition to withdraw the holding of abandonment due to nonreceipt of the Notice of Non-Compliant Amendment must be submitted within **TWO (2) MONTHS** from the mailing date of this decision. The request for reconsideration should include a cover letter entitled "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment," as well as statements and documentary evidence, as indicate above, to demonstrate nonreceipt of the Notice of Non-Compliant Amendment. Extensions of time are permitted under 37 CFR 1.136(a).

ALTERNATIVE VENUE

Petitioner is strongly encouraged to consider filing a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application instead of filing a renewed petition under 37 CFR 1.181 or a petition under 37 CFR 1.137(a).

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed. In nonprovisional utility application abandoned for failure to respond to a nonfinal Office action, the required reply may be met by filing either (A) an argument or amendment under 37 CFR 1.111 or (B) a continuing application under 37 CFR 1.53(b).
- (2) The petition fee as set forth in 37 CFR 1.17(m), **\$750.00 for a small entity**;
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and

A form for filing a petition to revive an unintentionally abandoned application, as well a guide to the Revised Amendment Practice accompany this decision for petitioner's convenience. If petitioner desires to file a petition under 37 CFR 1.137(b) instead of filing a request for reconsideration, petitioner must complete the enclosed petition form (PTO/SB/64), submit an amendment in compliance with the Revised Amendment Practice, and pay the \$750.00 petition fee.

Petitioner may wish to contact the Inventors Assistance Center (IAC) by telephone at 800-786-9199 or 571-272-1000, Monday through Friday from 8:30 AM to 5:30 PM (EST). The IAC provides patent information and services to the public and is staffed by former Supervisory Patent Examiners and experienced Primary Examiners who answer general questions concerning patent examining policy and procedure.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
 Attn: Office of Petitions

By hand: Customer Service Window
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosures: Petition For Revival Of An Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b) – Form PTO/SB/64, Privacy Act Statement, a copy of the Notice of Non-Compliant Amendment, a copy of the Notice of Abandonment, and a guide to the Revised Amendment Practice.